

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

ROBERT N BAYLY	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP17-22-004563
	§	
	§	
4 POINTS TOWING & ROADSIDE SERVICE LLC	§	
PAUL E KOPE	§	
JANET KOPE		
Defendants Below,		
Appellant		

TRIAL DE NOVO

Submitted: March 20, 2023
Decided: April 3, 2023

APPEARANCES:

Paul G. Enterline, Esq. for Plaintiff
Peter K. Schaeffer Jr., Esq. for Defendants

Deborah J. Keenan, Deputy Chief Magistrate
Richard D. Comly, Justice of the Peace
Scott H. Willey, Justice of the Peace

Willey for the Court

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP17-22-004563

ROBERT BAYLY V 4 POINTS TOWING & ROADSIDE SERVICE

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

HISTORY

Before the Court is a summary possession action filed by Plaintiff seeking possession of a commercial property, claiming to have been unlawfully ousted by Defendant. This is an appeal of the Court's decision below which awarded possession to Plaintiff. It is important to note this order addresses only the matter of possession; the debt and any related matters remain pending and are currently scheduled for trial April 3, 2023.

FACTS

The parties entered into a sales agreement for the properties located at 36671 and 36677 Sussex Highway, Delmar, Delaware. On the day of settlement, March 25, 2022, the parties entered into a subsequent agreement (contract), the substance of which is the basis for this action. Plaintiff asserts the contract is a lease agreement which requires court action to obtain summary possession if the contract is breached. Plaintiff originally filed this action when Defendant resorted to "self-help" by changing the locks on the property, thereby preventing Plaintiff access. Defendant avers the contract is not a lease but a license agreement which can be terminated at any time without the need for court action.

Both parties provided arguments supported by case law which were thoroughly examined by the Court. As Court decisions have indicated, the line between lease and license can be difficult to ascertain and the exact verbiage of the contract must be interpreted. In this matter the contract was drafted by Plaintiff and is, at best, ambiguous. The first paragraph specifies that Plaintiff is granted "... 60 days to vacate and remove all his tools, cars, etc." and "...has access to storage lot...for 1 year." The second paragraph is somewhat contradictory as it specifies a monthly rate for "...front Only including garage and car lot until total liquidation of everything. Should Not be more than 6 months total."

Relying on *Timmons v. Cropper* 172 A.2d 757, 759 (Del. Ch.1961), citing CJS Landlord and Tenant § 6, p. 513, Defendant asserts the proper interpretation is a license:

The principal test for determining whether the relationship created is that of landlord and tenant rather than that of licensor and licensee is whether the contract confers exclusive possession of the premises as against all the world, including the owner, and a mere permission to use land, dominion over it remaining with the owner, and no interest in, or exclusive possession of, it being given, is but a license.

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Additionally, *Beattie v. Beattie*, 786 A.2d 549, 555 (Del. Super. 2001) asserts:

Implicit in the lease agreement, then, is a specific term, regardless of duration, and a divestiture of property by the lessor during that term. The [Agreement] does not satisfy these criteria. It neither specifies a term, nor does it require [Defendant] to divest itself of control.... Accordingly, the [Agreement] is not a lease agreement.

With the usage of such terms as “access to,” “until,” and “should not be more than,” the Plaintiff has created ambiguity regarding both the exclusivity of his rights to the property and the duration of the agreement.

It is well-settled law that any ambiguity in a contract will be interpreted against the interest of the drafter, in this case, Robert Bayly. In consideration of this ambiguity and all relevant testimony and evidence, the Court finds that Plaintiff did not prove its case by a preponderance of the evidence.

ORDER

Accordingly, judgment is hereby entered in favor of Defendant, 4 Points Towing and Roadside Service, Janet Kope, Paul Kope and against Plaintiff, Robert N. Bayly.

IT IS SO ORDERED 03rd day of April, 2023

/s/ Scott H. Willey

Justice of the Peace
For the Panel



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).